IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 23-08-2007

CORAM

THE HONOURABLE MR.JUSTICE S.J.MUKHOPADHAYA
AND
THE HONOURABLE MR.JUSTICE S.TAMILVANAN

WRIT APPEAL Nos. 711 of 2001 and 2137 of 2002

W.A.No.711 of 2001

1. Alifullah
2. A.J.P.Ibrahim ... Appellants /Petitioner

-vs-

1. The State of Tamil Nadu
   Rep. by its Secretary to Government
   Adi Dravidar and Tribal Welfare Department,
   Fort St. George,
   Chennai - 600 009.

2. The Special Tahsildar
   (Adi Dravidar Welfare)
   Ramnad. ... Respondents

W.A.No.2137 of 2002

1. Alifullah
2. A.J.P.Ibrahim ... Appellants

-vs-

1. The State of Tamil Nadu
   Rep. by its Secretary to Government
   Adi Dravidar and Tribal Welfare Department,
   Fort St. George,
   Chennai - 600 009.

2. The Special Tahsildar
   (Adi Dravidar Welfare)
   Ramnad.

3. R.Sekar
4. M.Sonai
5. M.Bose

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6. K.Packiyam
7. K.Ramu
8. Latha
9. S.Murugeswari
10. Thiruchelvam
11. S.Parvathi
12. Kannan ... Respondents

W.A.No.711 of 2001

Writ appeal filed under Clause 15 of the Letters Patent against the orders dated 30.10.2000 made in W.P.No.3499 of 2000 Petition filed under Article 226 of Constitution of India to (i) issue a writ of certiorari to call to the records relating to the Awar No.7/93-04 dated 28.3.94 passed by the second respondent (WP 3499 of 2000).

W.A.No.2137 of 2002

Writ appeal filed under Clause 15 of the Letters Patent against the orders dated 03.06.2002 made in W.P.No.6530 of 1994. (ii) issue a writ certiorari or any other appropriate wirt to call for the records relating the G.O. (3d) No.75, Adi Dravidar and Tribal Welfare, dated 1.2.1994 issued under section 6 of the act that the lands i n the survey No.121/5 measuring 1.78.0 hectare of Sakkarakottai Village, Ramanathapuram Taluk, District, issued by the 1st respondent herein for public purpose is illegal(WP6530 of 1994).

For appellants : Mr.V.Raghavachari in both the writ appeals
For respondents : Mr.D.Sreenivasan, AGP for R1&R2
No appearance for R3 to R12 in WA 2137 of 02

J U D G M E N T

(Judgment of the Court was delivered by S.TAMILVANAN,J)

W.A.No.711 of 2001 has been preferred by the appellants / petitioners against the order, dated 30.10.2000, made in W.P.No.3499 of 2000. W.A.No.2137 of 2002 has been preferred by the same appellants / petitioners, against the order, dated 03.06.2002, made in W.P.No.6530 of 1994. In both the writ appeals, the appellants and respondents 1 and 2 are one and the same, though respondents 3 to 12 in W.A.No.2137 of 2002 are individuals, claiming rights as allottees of house sites by the state.

2. In W.P.No.3499 of 2000, the appellants / petitioners have challenged the Award No.7/93-94, dated 28.03.1994, passed by the respondents 1 and 2, on the ground that no notice was served on them and no prior approval from the District Collector was obtained from the Land

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Acquisition Officer before passing the award. It is seen from the records that the award was passed as early as 28.03.1994 and the same was also known to the appellants herein, as per the counter filed in the earlier writ petition and that there is no dispute with regard to the said facts. As per the finding of the learned single Judge, it is an admitted fact that the petitioners have filed the said writ petition in 2000, 5 years after the order was passed and there was no explanation for the delay of five years, though the petitioners have stated that they came to know about the land acquisition proceedings and award only on a later date. The learned single Judge, in the impugned order in W.P.No.3499 of 2000 has observed as follows in paragraph number 3 of the order now under challenge :

> " Learned counsel has submitted that the award was passed without any notice, but on the basis of the records. Learned Government Advocate has submitted that though notices were served, the petitioners have not appeared for the enquiry. Though the petitioners contention that no prior approval was obtained from the concerned authority is sustainable, I am not inclined to interfere with the award, as the petitioners have come forward with the above writ petition after five years without any proper explanation."

3. According to the appellants / petitioners, they had purchased the land on 12.01.1989 in Survey No.121/5 with an extent of 4 acres and 40 cents at Sakkarai Kottai Village and spent a huge amount for putting up barbed fence and for making irrigation facilities and they also dug a well and also planted coconut sapplings. They have further contended that the land was acquired, despite the fact that the land purchased by them at Bharathi Nagar was already acquired by the first respondent for the purpose of allotment of house sites, though alternative sites were available and that the appellants had no other land, except the land that was sought to be acquired. It is seen from the finding of the learned single Judge that the respondents 1 and 2 have denied the averments of the appellants with reference to raising of coconut plantations, spending huge amount for other developments of the land as untrue. In the writ appeal, the appellants have stated that the award, dated 28.03.1994 was not served on the appellants and therefore, there is no latches on the part of the appellants in challenging the award passed by the second respondent herein. They also contended that the second respondent has not obtained prior approval from the competent authorities and that the procedures as contemplated under the Central Act was not followed in passing the award.

4. While the case was taken for hearing, Mr.V.Raghavachari, learned counsel appearing for the appellants vehemently argued on the following three points :

1. The award of the second respondent, dated 28.03.1994 was not served on the appellants and therefore, there is no latches on the part of the appellants, as found by the learned single Judge.

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2. The award is bad in law, because the respondent has not obtained prior approval.

3. Though, as per Section 4 (1) of the Land Acquisition Act, notification should be effected by publishing the same in the official gazette and in two daily newspapers, in circulation of the locality of which, one should be in the regional language.

5. According to the learned counsel, the publication for the land acquisition proceedings was made on 11.02.1994 in Kumari Murasu, Tamil Daily, though the said Tamil Daily was not in circulation in the locality, where the acquired lands situate.

6. The learned counsel for the appellants in support of his contention cited the following decisions :

1. Bailamma vs. Poornaprajna House Building Coop. Society, 2006 (2) SCC 416
2. State of U.P. vs. Rajiv Gupta , 1994 (5) SCC 686.

7. As per the decision Bailamma vs. Poornaprajna House Building Coop. Society, reported in 2006 (2) SCC 416, the Hon'ble Supreme Court has ruled that as per Section 11-A of the Land Acquisition Act, 1894, limitation period of two years has been stipulated for making the award mandatory.

8. According to the respondents 1 and 2, as per their counter, all the legal formalities under the Land Acquisition Act have been complied with. It is not in dispute that Section 4 (1) Notification was issued on 07.01.1993 and enquiry was conducted on 08.04.1993, as per Land Acquisition Act. As per the finding of the learned single Judge, though, notice was served to the appellants / petitioners, they did not appear for the enquiry. It has been held that the objection raised that the lands had been purchased for raising coconut plantations and spent huge amount for development of the land as untrue by the Special Tahsildar, after considering the objections raised by the appellants. It is seen that declaration under Section 6 was issued on 01.02.1994 and the same was approved by the Government, under Section 7 of the Land Acquisition Act on 09.03.1994, after observing all legal formalities. As the appellants did not appear for the enquiry and also to receive compensation, the amount was kept in revenue deposit in their favour in the Sub Treasury, Ramanathapuram and possession of land was taken over on 29.03.1994. According to the respondents 1 and 2, lay out plans were approved and house sites pattas were issued to Adi Dravidars of Anna Nagar of Sakkarai Kottai Village on 31.03.1994.

9. Based on the evidence available on record, the learned single Judge has held that coconut seedlings were planted only subsequent to the Notification issued under Section 4 (1) of the Land Acquisition Act and that it was only an attempt to avoid the land acquisition proceedings. An Advocate Commissioner was also appointed to find out whether the possession was taken over by the authorities, pursuant to the land

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acquisition proceedings. The learned single Judge, considering the evidence available on record, has held that the above said arguments advanced on behalf of the appellants / petitioners were extraneous for the purpose of disposal of the writ petition and accordingly, both the writ petitions were dismissed on Merits.

10. In the writ appeals, Mr.V.Raghavachari, learned counsel appearing for the appellants would contend that under Section 6, Declaration as per Land Acquisition Act, it was published in Madurai Murasu, Tamil Daily, dated 28.01.1993. According to the learned counsel, the said Tamil Daily is not in circulation at the area, where the acquired lands situated. It is quite clear that in the writ appeal, this Court cannot go into the question of fact that was decided, based on evidence and as such, we are of the considered view that the question whether the newspaper has wide circulation or limited circulation cannot be disputed in the writ appeal. It is seen that after the land acquisition proceedings, layout was prepared by the authorities and approved for house site and subsequently, the sites were allotted to various persons, as per the scheme of the State Government.

11. Mr.V.Raghavachari, learned counsel appearing for the appellants contended that the award, dated 28.03.1994, passed by the second respondent was not served on the appellants and therefore, there is no latches in challenging the said award. He has further contended that the award is bad in law, because the second respondent has not obtained prior approval. In support of his contention, the learned counsel cited the decision State of U.P. vs. Rajiv Gupta, reported in 1994 (5) SCC 686, wherein the Hon'ble Supreme Court has held as follows :

> " 5. Its bare reading indicates and emphasises the limitation within which the award should be made and has been statutorily determined, namely, the Collector shall make an award within a period of two years from the date of the publication of the declaration. It is common knowledge that after declaration was published, years used to roll by to make the award and the owners of the lands were put to great hardship. Parliament intended to relieve the owners of the lands from this hardship and pegging of the price prevailing as on date of publication of Section 4 (1) notification. It is, therefore, a mandatory duty cast on the Land Acquisition Collector to make the award strictly in accordance with the limitation under Section 11-A. If no award is made within that period, the entire proceedings for the acquisition of the land shall lapse. In other words, on expiry of two years from the date of the publication of the declaration unless the proviso is attracted, if no award is made in the meantime, in the eye of law the proceedings initiated under Section 4 (1) of the Act culminated in the declaration made under Section 6 shall stand lapsed

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and no proceedings, in the eye of law thereafter do exist, to take further action."

12. In the instant case, it cannot be construed that the Land Acquisition Proceeding was affected in view of Section 11-A of the Land Acquisition Act, 1894 on the facts discussed earlier. The appellants have challenged the award, dated 28.03.1994, on the ground that no notice was served on the appellants, as contemplated under Section 9 (3) and 12 (2) of the Act. But the learned single Judge has given a clear finding with regard to the same and that the award was passed as early as 28.03.1994. In this regard, the learned single Judge has observed as follows in the impugned order, dated 31.10.2000, passed in W.P.No.3499 of 2000 :

" The petitioner filed the above writ petition, challenging the Award No.7/93-94, dated 28.03.1994 on the basis that no notice was served and no prior approval from the Collector was obtained by the Land Acquisition Officer before passing the award. It is not in dispute that the award was passed as early as 28.03.1994. This fact was known by the petitioner from the counter filed in the earlier writ petition. There is no dispute about the fact. Earlier counter was filed even according to the learned counsel in 1995, but the petitioner has filed the above writ petition in 2000, after five years. There is no averment in this writ petition as to why the petitioners have come forward with the writ petition after five years, though the petitioners came to know about the fact that the award was passed."

13. Considering the arguments advanced both the learned counsel and on a careful perusal of the material papers available on record, we are of the considered view that the aforesaid finding of the learned single Judge is no way perverse or against law, so as to interfere with the same in the writ appeals.

14. In the result, both the writ appeals in W.A.No.711 of 2001 and 2137 of 2002 fail and accordingly, they were dismissed. However, there is no order as to costs.

sd/-
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Secretary to Government
   State of Tamil Nadu
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2. The Special Tahsildar
   (Adi Dravidar Welfare)
   Ramnad.

+ 1 cc to Govt.pleader SR.NO.53034

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